

# STATE OF NEW YORK

4080

2017-2018 Regular Sessions

## IN SENATE

February 2, 2017

Introduced by Sens. DeFRANCISCO, AKSHAR, AMEDORE, BOYLE, BRESLIN, FUNKE, GALLIVAN, HAMILTON, HOYLMAN, KAMINSKY, KRUEGER, LANZA, LARKIN, MONTGOMERY, PERKINS, RANZENHOFER, RITCHIE, ROBACH, SANDERS, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to accrual of causes of action for medical, dental and podiatric malpractice

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The opening paragraph of subdivision (g) of section 203 of  
2 the civil practice law and rules is designated paragraph 1 and a new  
3 paragraph 2 is added to read as follows:

4 2. Notwithstanding any other provision of law to the contrary, for the  
5 purposes of sections fifty-e and fifty-i of the general municipal law,  
6 section ten of the court of claims act, and the provisions of any other  
7 law pertaining to the commencement of an action or special proceeding,  
8 or to the filing of a notice of claim as a condition precedent to  
9 commencement of an action or special proceeding within a specified time  
10 period, the period in which to commence an action or proceeding or to  
11 file such notice of claim for medical, dental or podiatric malpractice  
12 shall not begin to run until the later of either: (a) when one knows or  
13 reasonably should have known of the alleged negligent act or omission  
14 and knows or reasonably should have known that such negligent act or  
15 omission has caused an injury; or (b) the date of the last treatment  
16 where there is continuous treatment for the same illness, injury or  
17 condition which gave rise to the accrual of an action. However, such  
18 action shall commence no later than seven years from the act, omission  
19 or failure complained of or last treatment where there is continuous  
20 treatment for the same illness, injury or condition which gave rise to  
21 the act, omission or failure; provided, however, that where the action  
22 is based upon the discovery of a foreign object in the body of a

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 patient, the action may be commenced within one year of the date of such  
2 discovery or of the date of discovery of facts which would reasonably  
3 lead to such discovery, whichever is earlier.

4 § 2. Section 214-a of the civil practice law and rules, as amended by  
5 chapter 485 of the laws of 1986, is amended to read as follows:

6 § 214-a. Action for medical, dental or podiatric malpractice to be  
7 commenced within two years and six months; exceptions. An action for  
8 medical, dental or podiatric malpractice must be commenced within two  
9 years and six months of the accrual of any such action. The accrual of  
10 an action occurs at the later of either (a) when one knows or reasonably  
11 should have known of the alleged negligent act or omission and knows or  
12 reasonably should have known that such negligent act or omission has  
13 caused an injury; or (b) the date of the last treatment where there is  
14 continuous treatment for the same illness, injury or condition which  
15 gave rise to the accrual of an action. However, such action shall  
16 commence no later than seven years from the act, omission or failure  
17 complained of or last treatment where there is continuous treatment for  
18 the same illness, injury or condition which gave rise to the said act,  
19 omission or failure; provided, however, that where the action is based  
20 upon the discovery of a foreign object in the body of the patient, the  
21 action may be commenced within one year of the date of such discovery or  
22 of the date of discovery of facts which would reasonably lead to such  
23 discovery, whichever is earlier. For the purpose of this section the  
24 term "continuous treatment" shall not include examinations undertaken at  
25 the request of the patient for the sole purpose of ascertaining the  
26 state of the patient's condition. For the purpose of this section the  
27 term "foreign object" shall not include a chemical compound, fixation  
28 device or prosthetic aid or device.

29 § 3. Notwithstanding any other provision of law, including sections  
30 50-e and 50-i of the general municipal law, section 10 of the court of  
31 claims act and the provisions of any general, special or local law or  
32 charter requiring as a condition precedent to commencement of an action  
33 or special proceeding that a notice of claim be filed or presented,  
34 every action for personal injuries or wrongful death stemming from  
35 alleged medical malpractice which has been barred during and up to the  
36 seven year period prior to the effective date of this act solely because  
37 the applicable period of limitations has or had expired before the  
38 injured plaintiff or injured claimant or the representative of their  
39 estate did not know and reasonably should not have known that they had  
40 been injured as a result of medical malpractice is hereby revived and an  
41 action thereon may be commenced provided such action is commenced within  
42 one year from the effective date of this act.

43 § 4. This act shall take effect immediately.